

Note from the Presidency of the Council of the European Union to the General Affairs Council (Brussels, 6 October 1999)

Caption: On 6 October 1999, the Presidency of the Council of the European Union forwards a note to the General Affairs Council on the external action of the European Union in the field of justice and home affairs (JHA).

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Note from the Presidency to the General Affairs Council Enhanced and more coherent external action of the Union in the field of Justice and Home Affairs (Brussels, 6 October 1999)

I. Introduction

The special European Council of Tampere (15-16.10.1999) will give further guidance to the action of the Union in the field of Justice and Home Affairs. The establishment of an area of freedom, security and justice requires, among other things, coherent external action and a cross-pillar approach. This objective has been reaffirmed in different contexts.

The need for coherence, consistency and continuity has been accentuated as a consequence of recent experiences within external relations. Coreper's role in this respect must be underlined. Today's crises, like the one in Kosovo, had multifaceted effects throughout the Union and its Member States. In addition to conflict management challenges they entail mass influxes of displaced persons, often looking for protection in the Union area, illegal trafficking of human beings, drugs or arms as well as other forms of organised crime. It is not only external crises which challenge the area of freedom, security and justice. Also other phenomena such as migration and cross-border crime and, in particular, money laundering are of relevance. The overall objective of creating an area of freedom, security and justice calls for an in-depth analysis and discussion on how the Union's action should be prioritised and organised within justice and home affairs in relation to third countries and international organisations.

The Treaty on European Union emphasises the consistency and the continuity of the Union's activities. According to Article 3 TEU the Union shall, in particular, ensure the consistency of the external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission are responsible for such consistency.

II. Assessment of pre-Amsterdam external action in Justice and Home Affairs

When developing the external aspects of an area of freedom, security and justice, the necessary lessons should be drawn from experiences gained so far:

Since the entry into force of the Maastricht Treaty, the external dimension of the Union's Justice and Home Affairs policies has gradually developed. Under the French Presidency in 1995 rules were agreed on contacts with non-Member countries giving a special role to the Troika. Since 1996 every incoming Presidency presented its work programme for external relations in Justice and Home Affairs¹. The EU launched a specific JHA dialogue with several third countries (e.g., USA, Turkey, Switzerland, Russia, Morocco) and groups of countries (e.g., Latin America/Caribbean, Euro-Mediterranean Dialogue). Furthermore, it has endeavoured to coordinate Member States' position in international fora (e.g., OECD, Council of Europe, UN).

In the Presidency's view, the history of JHA external relations can point to some success stories on which future efforts should build:

– Notably, the Council adopted four Common Positions under ex-Article K.3 TEU, relating to ongoing negotiations on anti-corruption measures drafted within the Council of Europe and the OECD, on the so-called draft Cyber-crime Convention (Council of Europe negotiations still ongoing) and on the draft UN Convention on Organised Crime (UN negotiations still ongoing)². These Common Positions proved very useful in the different international negotiations, enabling the Union to speak with one voice and acting in a coordinated and coherent way.

– The development and involvement of bodies such as Europol and the Lisbon Monitoring Centre have greatly enhanced the Union's capacity of external action in Justice and Home Affairs matters.

- The elaboration of a comprehensive drugs Action Plan between the European Union and Latin America / Caribbean was the fruit of a promising approach which is now being used as a model for a strategy for other regions and subject-matters.
- The High Level Group on asylum and migration has now completed its impressive work in a relatively short time.

However, while fully acknowledging the dedication shown by the successive Presidencies and the Commission in this area, a fair assessment of the results achieved so far also forces to recognise several deficits:

- External relations have sometimes not been sufficiently “problem-driven” and proactive. Many times, dialogues have started on request of the respective third countries in a non-coherent manner.
- Implementation of Actions Plans and other measures agreed has not always been perfect, and should be more thoroughly evaluated in the future.
- In particular, the effort made under the Italian Presidency in spring 1996 for a more coordinated, comprehensive and proactive approach, focusing notably on threat assessment, definition of priorities, external representation and creation of a specific working structure, was not fully accepted. The more pragmatic approach subsequently agreed in autumn 1996, providing e.g. for a specific role to JHA Counsellors, was not always implemented to the full.
- The discussions within the Council which led to the four Common Positions adopted were difficult and time-consuming, and their efficiency has been diminished by a sometimes problematic coordination between Council working groups and EU negotiators in the relevant international fora; this has inhibited attempts to adopt more Common Positions in other fora.

For the building of a true area of freedom, security and justice, it will be important in the future that clear priorities for external action be set according to the best common interest and that the Union and its Member States mobilise their resources to firmly pursue these priorities. Indeed, intelligence available provides clear indication on the countries from which most of the heroin, cocaine, hashish and synthetic drugs, respectively, smuggled in the Union is originating. Comparable evidence exists in fields such as money laundering, organised crime or trafficking in human beings. If it resolves to show will and courage, the Union is in a position to use better its political and economic weight, its expertise and its financial resources to convince and help these countries to enhance law enforcement and cooperation.

It is also indispensable to “upgrade” Justice and Home Affairs interests so that they become real objectives of foreign policy. Further prerequisites for an efficient policy are interpillar and interinstitutional transparency, a maximum of coordination of the Union’s position in all international fora (including the ones where not all Member States are represented), concentration of resources on this policy sector within Member States and the institutions, as well as appropriate mechanisms for monitoring implementation.

The Commission’s role is of course crucial in this context, in particular with respect to external representation in the significant number of ex-third pillar areas which now come under Title IV TEC and to policy implementation in general.

III. Presidency Suggestions

It follows from the preceding analysis that there is an urgent need to define clear priorities for external action in Justice and Home Affairs. This would require identifying not only the areas and subjects on which the Union has a real need to work closely with third countries, whether individually or in groups, but also the nature of the Union's relationship with the countries concerned and their involvement.

To that end specific recommendations should be made by Coreper to the Council on policy objectives and measures for the Union's external action in Justice and Home Affairs, on the basis of a proposal submitted by the Presidency and the Commission in accordance with their respective competences in this area. In this context, attention is also drawn to the provisions on the role of the Secretary General / High Representative (cf. Art. 37 TEU with references to Art. 18 and 19 TEU; see also declaration No. 6 to the Treaty of Amsterdam). In these recommendations a more coordinated and interlinked use of different Union and Community instruments should be encouraged (e.g. combined use of III, II pillar and I pillar instruments).

These recommendations could elaborate more specifically the following aspects:

1. Substantive Priorities

- addressing pressure for flights or migration (in particular in the countries of origin dealt with in the High Level Working Group currently and - subject to an extension of its mandate - in the future),
- fighting production and trafficking of drugs, with specific regard to the Action Plan on drugs for 2000-2004 (in particular in relations with producing countries in Latin America, Central Asia and Africa as well as with countries such as Morocco and Turkey),
- organised crime, terrorism and money laundering, (focusing subject to a thorough need assessment, as a first step on relations with Russia and jurisdictions failing to adopt interventional standards on money laundering, but including also other countries),
- trafficking in human beings, in particular women,
- destabilised crisis areas such as the Balkans which pose challenges to the EU in various fields of Justice and Home Affairs; a specific initiative should be considered on Kosovo with a view to ensuring stability and fighting organised crime,
- intensified cooperation in border control and other fields with the areas adjacent to the Union's external borders, including but not limited to the candidate countries,
- new technologies (e.g. aspects of electronic commerce, data protection, related criminality issues),
- cooperation in the field of civil law with the international organisations (e.g. applicable law),
- cooperation and dialogue with the candidate countries, as well as the collective evaluation mechanism,
- supporting the development of the rule of law.

In all these areas the Union will need to intensify its relations with a number of third countries which are partners in international organisations or fora such as the Council of Europe, the OECD or the G8, or with which cooperation should be reinforced.

2. Coordination, Representation and Methodology

a) There is a need to develop the most appropriate and efficient coordination between structures competent for Justice and Home Affairs and other policies. This is the case in particular within external relations, in areas such as immigration, organised crime, terrorism and drugs.

It should be considered whether the above mentioned evaluation could also cover questions of working structure with a view to ensuring coherence and inter-pillar coordination between Justice and Home Affairs and other policies, in particular external relations; such analysis should be based on the Trumpf/Piris report and the Council proposals to be adopted in light of this report.

Suggestions to be examined by the Presidency and Coreper in this respect could include the following:

- Using the approach of the High Level Working Group on asylum and migration in other specific areas, e.g., concerning action plans vis-à-vis countries of drugs production and trafficking.
- Exploring means to ensure a more active and regular interaction within the Council between its various formations.
- An attempt to rationalise Working Group structures with a view to avoiding overlap on issues concerning the external dimension of Justice and Home Affairs.
- The Presidency to organise at regular intervals meetings between the Presidency and the incoming Presidency - both represented by Ministers responsible for external relations and Justice and Home Affairs -, the Commissioners responsible for external relations and Justice and Home Affairs, and the Secretary-General / High Representative. These meetings could be prepared by Coreper, if need be.

b) Member States' diplomatic and consular missions as well as Commission delegations in third countries should be made fully aware of Justice and Home Affairs and should closely cooperate among each other to promote the external dimension of Justice and Home Affairs. This should entail, among other things, more regular meetings and common analyses on Justice and Home Affairs issues. The enhanced cooperation could include third country missions where applicable. Examples could include evaluations of the efficiency of clauses on readmission or drugs in EU association / cooperation agreements, or monitoring the implementation of the Action Plans drawn up by the HLWG on asylum and migration. Better use should be made of the expertise of more than 300 Member States' liaison officers posted in third countries.

c) The external relations of Europol should be developed rapidly and in coherence with the overall policy of the Union on external aspects of Justice and Home Affairs.

3. Instruments

a) Concerning the external relations of the Community, the existing Treaty provisions and the relevant jurisprudence of the European Court of Justice should be fully applied.

With priority, the Community should negotiate readmission agreements with individual countries of transit and origin or groups of such countries, in particular the countries dealt with within the High Level Group. Further Community agreements on matters falling under Title IV TEC, and in particular in the field of judicial cooperation in civil law, concluded were necessary.

b) With respect to prospective Council agreements on matters falling under Title VI TEU, priority should be given to initiating negotiations with appropriate countries for one multilateral or several bilateral agreements (e.g. counterfeiting of the EURO and on money laundering, the latter to be concluded in particular with jurisdictions failing to adopt interventional standards on money laundering). Another priority should be a

Council agreement on judicial cooperation in criminal matters with Russia. This could take the form of a general framework agreement - to be supplemented by national bilateral agreements - or of an agreement on specific topics such as money laundering or stolen cars.

c) The Union's requests on Justice and Home Affairs aspects will not be satisfied by third countries unless they are linked to other aspects of its policies. That is why Justice and Home Affairs aspects should be brought into Common Strategies systematically, as it has been done so far.

d) In order to coordinate better Member States' positions in international organisations or fora in matters falling under Title VI of the TEU, Common Positions should be adopted more frequently. Time being of the essence in this context, flexible-working methods should be used so as to speed up discussions of draft Common Positions in the Council. Consideration should also be given to conceiving a mechanism to coordinate and represent the Union's position in international fora where not all Member States are represented (e.g. G 8).

e) Consideration could be given to closer evaluation by the Commission and the Council of the implementation of Action Plans and JHA clauses inserted in EU association or cooperation agreements³, as well as to the possibilities of strengthening such provisions.

¹Reflection document under Italian Presidency: 6891/96 JAI 25

Elements of a strategy under Irish Presidency: 6891/96 JAI 25 REV 2 + ADD 1

NL programme 5360/2/97 JAI 2 REV 2
LUX programme 10383/1/97 JAI 25 REV 1
UK programme 13506/1/97 CK4 48 REV 1
and reports of results 10117/98 CK4 33
A programme 9627/98 CK4 24
D programme 14414/98 CK4 54 ADD 1
FIN programme 9622/99 JAI 57

² Common Position of 6 October 1997, O.J. L 279/1 of 13 October 1997, and Second Joint Position of 13 November 1997, O.J. L 320/1 of 21 November 1997 (Council of Europe and OECD Conventions on the fight against corruption); Joint Position of 29 March 1999, O.J. 31 March 1999 (UN Convention against organised crime); Common Position of 27 May 1999, O.J. L 142/1 of 5 June 1999 (draft Council of Europe Cyber Crime Convention).

³ The latest overview by the Commission of JAI clauses included in such agreements is contained in doc. 7703/95 JAI 17, listing clauses on "free movement", "narcotics", "illegal activities" and "immigration".